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July 28, 2011

David C. Kroon

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Extension 674

Certified / Return Receipt Requested

Federal Communications Commission

Office of the Secretary

445 12th Street, SW

Room TW-A325

Washington, DC 20554

Re: Docket Nos. 02-60
Horizon Health Care, Inc., HCP 15937
Appeal from Denial of Site Status

Dear Sir or Madam:

This office represents Horizon Health Care, Inc. ("Horizon") with respect to its appeal of the decision of the USAC Rural Health Care Division's ("RHCD") Rural Health Support Mechanism Pilot Program ("Pilot Program"), that Horizon's Howard Administrative Office is not a "health care provider" eligible to receive benefits under the Pilot Program. A copy of the Administrator's decision dated July 5, 2011 is attached to this correspondence as Exhibit A.

The "Howard Administrative Office" serves as both an administrative office and a data center for Horizon, a Federally Qualified Community Health Center. The Howard Administrative Office is located in Howard, South Dakota, a rural health professional shortage area. The office serves as a central hub for nine rural clinics and includes a data center housing technology (i.e. DS-3 line, core router, EMR servers, back-up generator) to facilitate patient care in these medically under-served areas. The data center connects the following rural and frontier clinic locations: Lake Preston, Bryant, Bell Medical, Howard, Whiting Memorial, Aurora County, Jerauld County, Mellette County, Mission Medical, and Bennett County Community Health Center, all within South Dakota.

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The Administrator concluded that “the Howard site is an administrative office, which is not an eligible health care provider as defined by the FCC, and thus not eligible to receive support under the program.”

The Administrator’s decision is in error as a matter of law. 47 C.F.R. § 54.601(a)(2)(ii) includes “community health center” in the definition of a “health care provider.” 47 C.F.R. § 54.601(a)(4) provides “each separate site or location of the health care provider shall be considered an individual health care provider for purposes of calculating and limiting support under this subpart,” the terms “separate site” or “location” are undefined. However, the Rural Health Care Pilot Program Frequently Asked Questions (<http://transition.fcc.gov/cgb/rural/rhcp.html>) provides the following guidance in a question and answer format:

5. Are data centers eligible for funding under the Pilot Program?

- If a data center is connected (e.g., transmits data to and receives data from) to an eligible health care provider, the data center may qualify for funding as an eligible network component.
- Data centers, however, do not qualify as eligible health care providers under § 254(h)(7)(B) of the Communications Act and FCC rules. Examples of eligible health care providers are included in the answer to FAQ #4 above. Accordingly, a stand alone data center (not connected to an eligible health care provider) is not eligible for Pilot Program funding.

The Howard Administrative Office transmits data to and receives data from all of the health care centers identified above. It is undisputed that these centers are otherwise qualifying health care providers. Accordingly, the Howard Administrative Office qualifies as a “connected” data center.

The Howard Administrative Office is not a stand alone data center. I am attaching Exhibit B illustrating Horizon’s current network infrastructure and the connection between the Howard administrative office/data center and the clinics. You will note that the connection is through an MPLS (Multiprotocol Label Switching) cloud, which is a technology that acts as a “traffic cop” and directs electronic health information to and from Horizon’s rural health clinics. The existence of cloud technology does not alter the basic characteristics of the data center’s transmission to and from the qualifying medical providers.

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Horizon previously received USAC subsidies when its rural health clinics connected to the datacenter via point-to-point connections. This type of transmission line continues to be an allowable form of connectivity in the Program. In the summer of 2009, Horizon upgraded to MPLS connections in all locations. Nothing changed in regard to type of facilities being connected, the amount of bandwidth per clinic location, or the type of clinic data transmitting across the upgraded lines. The introduction of the connection between the data center and the MPLS cloud apparently triggered the eligibility question even though nothing changed in regard to the amount of bandwidth and health information transferred between the medical clinics and the datacenter.

If Horizon's datacenter was located in an urban/metro location, it would receive the benefits of competitive urban pricing, but USAC's decision penalizes Horizon for residing in a rural community (population under 1,000). This is contrary to the Program's goal of ensuring "that rural health care providers pay no more for telecommunications in the provision of health care services than their urban counterparts."

In order to secure funding, Horizon would be willing to revert back to the previously USAC-eligible connection illustrated in the diagram attached as Exhibit C, a T1 point-to-point connection. This would, however, be a step back to an inferior technology. The distinction now made between T1 and cloud technology is a distinction without a difference.

For the reasons noted above, Horizon respectfully requests that the decision of the Administrator be reversed and funding permitted.

Yours truly,

WOODS, FULLER, SHULTZ & SMITH P.C.



David C. Kroon

Enclosures



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Administrator's Decision on Rural Health Care Program Appeal

| *Via Electronic and Certified Mail*

July 5, 2011

Mr. John Mengenhause, CEO
Horizon Health Care, Inc.
109 N. Main Street
P.O. Box 99
Howard, SD 57349

Re: Request for Reconsideration of Denial of Site Status
Howard Administrative Office, HCP 15937

Dear Mr. Mengenhause:

The Universal Service Administrative Company (USAC) has completed its evaluation of the letter of appeal, dated May 12, 2011, you submitted on behalf of Howard Administrative Office (Howard). You request that USAC reconsider the USAC Rural Health Care Division's (RHCD) decision that Howard is not a health care provider (HCP) eligible to receive benefits under the Rural Health Support Mechanism Pilot Program (Pilot Program). Upon review, USAC concludes that this entity is not eligible to receive support.

Decision on Appeal and Explanation: Denied

In the Pilot Program, public or non-profit HCPs may apply for funding to construct a broadband network.¹ HCPs eligible to receive support are defined in the FCC's rules as any:

- (i) post-secondary education institution offering health care instruction including a teaching hospital or medical school;
- (ii) community health center or health center providing health care to migrants;
- (iii) local health department or agency;
- (iv) community mental health center;
- (v) not-for-profit hospital;
- (vi) rural health clinic; or
- (vii) consortium of health care providers consisting of one or more entities listed above.²

¹ 47 C.F.R. § 54.601(a)(1). See also *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, FCC 06-144, 21 FCC Rcd 11111, ¶ 3 (2006).

² 47 C.F.R. § 54.601(a)(1-2).



Excluded from the list of eligible HCPs are nursing homes, hospices, other long-term care facilities, pharmacies and emergency medical service facilities.³

Based on research and information provided by Howard during the review of the application, RHCD concluded that the Howard site is an administrative office, which is not an eligible health care provider as defined by the FCC, and thus not eligible to receive support under the Program. In an email to USAC, you stated that "the administration location serves as a central hub for nine rural clinics and includes a datacenter housing technology (e.g. DS-3 line, core router, EMR servers, backup generator) necessary for the clinics to see patients."⁴

An administrative office is often used to describe a facility separate from the HCP site that performs human resource functions, staffing, payroll, billing, procurement, record keeping or other administrative functions for the HCP. Administrative office is not an eligibility category listed in the FCC's rules.⁵ Additionally, the FCC stated in the *Pilot Program Selection Order* that ineligible costs include "program administration or technical coordination that involves anything other than the design, engineering, operations, installation or construction of the network."⁶ Therefore, RHCD correctly determined that Howard's administrative office is not an eligible HCP and the appeal is denied.

If you wish to appeal this decision, you may file an appeal pursuant to 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:

<http://www.usac.org/rhc/about/filing-appeals.aspx>

Sincerely,

USAC

³ *In the Matter of Rural Health Care Support Mechanism*, Order, WC Docket No. 02-60, FCC 07-198, 22 FCC Rcd 20360, ¶ 71 (2007) (*Pilot Program Selection Order*).

⁴ Email from Scott Weatherill, CIO, Horizon Health Care to USAC (May 17, 2011, 11:19 AM).

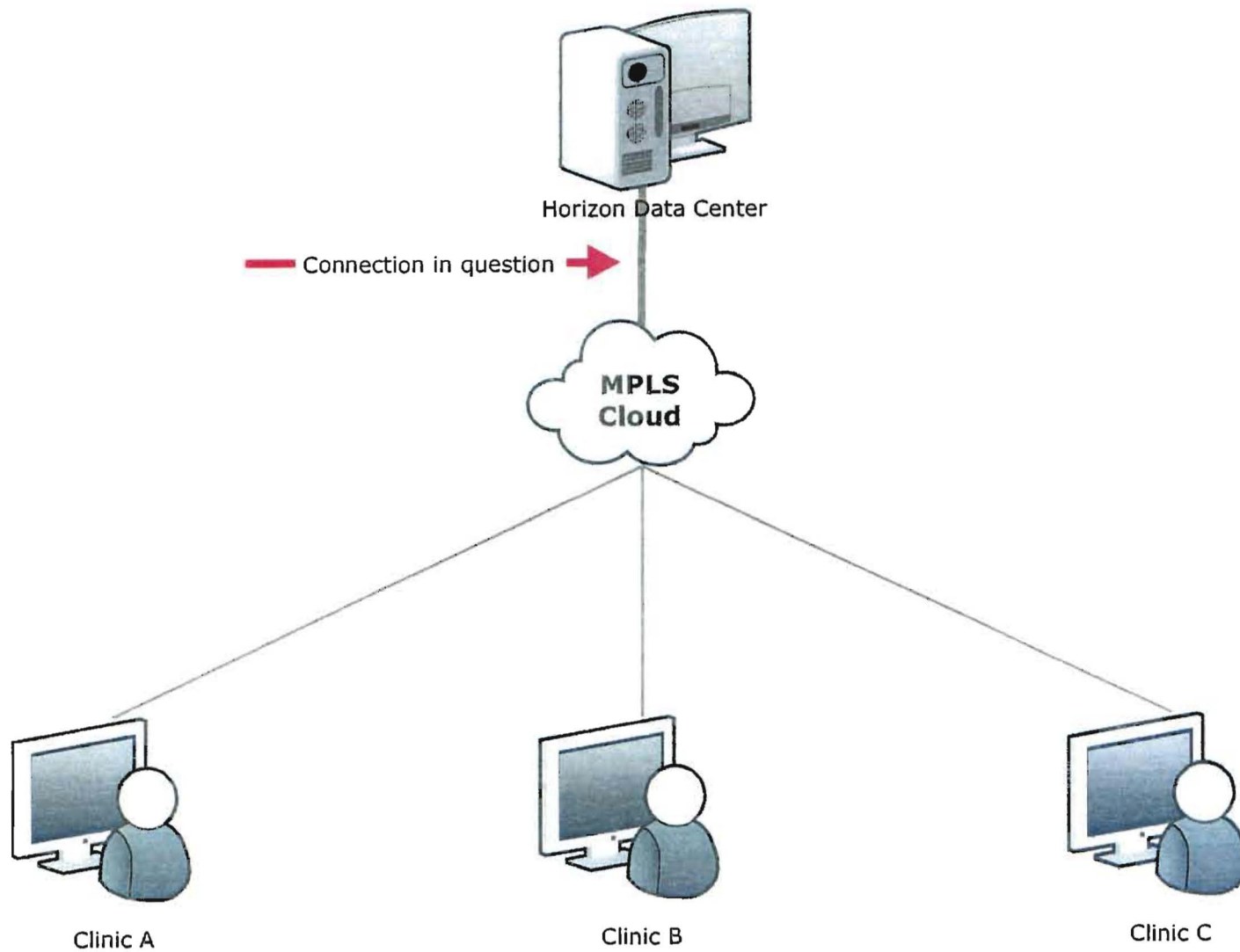
⁵ See 47 C.F.R. § 54.601(a)(1-2).

⁶ *Pilot Program Selection Order*, ¶ 75.

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